

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 394 OF 2012

Smt. Savitagauri J. Modi and ors. .. Petitioners
vs.
Rajendra G. Kadam and ors. .. Respondents

Mr. K.K. Malpathak for the Petitioners.
Ms M.S. Bane, B-Panel Counsel for Respondent No.8.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 17 February 2016.
Date of Pronouncing the Judgment : 01 March 2016.

JUDGMENT :-

1] The challenge in this petition is to the judgment and order dated 19 October 2011 made by the Maharashtra Revenue Tribunal (MRT) in exercise of revisional jurisdiction conferred upon it by Section 76 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) .

2] By the aforesaid the impugned judgment and order, the MRT has interfered with and set aside the judgments and orders dated 12 February 2009 and 3 September 2009 made by the Tahsildar and Sub-Divisional Officer (SDO), who had held that the Petitioners-landlords were entitled to the recovery of possession of the suit property from the Respondents-tenants, *inter alia*, on the grounds of default in payment of rent and commission of act, which was destructive or permanently injurious to the land.

3] The Petitioners are the owners of the suit property, which was used to grow Coconuts, Betel Nuts, Mangoes etc. In 1943 or thereabouts, the said property was leased by means of 'Naukarnama' to the predecessor-in-title of the Respondents-tenants, subject to certain terms, conditions and covenants. It is the case of the Petitioners-landlords that since the suit property was leased for growing of fruits in terms of Section 43-A of the Tenancy Act, certain provisions of the Tenancy Act as specified in sub-section (1) thereof, do not apply in respect of the lease of the said property. On such basis, it is the case of the Petitioners-landlords that the provisions relating to '*deemed purchase*' are inapplicable and further, the Petitioners-landlords are entitled to terminate the lease *inter alia*, upon the grounds set out in Section 14 of the Tenancy Act.

4] Accordingly, the Petitioners-landlords, by address of notice dated 17 May 2008 and upon grounds set out in the said notice terminated the lease and instituted Tenancy Case No. 4 of 2008 before before the Tahsildar, Alibaug, seeking the recovery of possession of the said property from the Respondents-tenants. The Tahsildar, Alibaug by his judgment and order dated 12 February 2009 upheld the claim of the Petitioners-landlords and directed the Respondents-tenants to restore the possession of the said property to the Petitioner-landlords.

5] The Respondents-tenants, thereupon appealed against the judgment and order dated 12 February 2009 made by the Tahsildar, Alibaug to the SDO, Alibaug vide Tenancy Appeal No. 11 of 2009. The SDO, Alibaug by his judgment and order dated 3 September 2009, dismissed the appeal, thereby confirming the judgment and order dated 12 February 2009 made by the Tahsildar, Alibaug.

6] The Respondents-tenants, thereafter instituted Tenancy Revision No. 412/B/2009 before the MRT, Mumbai, which, by the impugned judgment and order dated 19 October 2011, has set aside the judgments and orders dated 12 February 2009 and 3 September 2009 made by the Tahsildar and SDO, consequently dismissing the Petitioners-landlords' Tenancy Case No. 4 of 2008, seeking recovery of possession of the said property from the Respondents-tenants. Hence, the present petition by the Petitioners-landlords.

7] Despite service, neither the Respondents-tenants nor any advocate on their behalf, have appeared in the matter. Considering that Petitioner No.1 was reported to be over 100 years of age, the hearing in this petition was expedited by the orders dated 26 July 2012, 11 March 2013 and 18 April 2015. The matter was appearing on the board and there is really no justification for the Respondents-tenants or their advocate from not appearing in the matter.

8] Mr. K.K. Malpathak, learned counsel for the Petitioners, has made the following submissions in support of the petition:

A] In order to hold that the provisions contained in Section 43-A of the Tenancy Act are inapplicable to the lease in respect of said property, the MRT has placed reliance upon the decision of this Court in case of *Rama Dattu Naikwade Vs. Govinda Bala Patil* ¹. However, the said decision has been reversed by the Supreme Court on 29 July 2013 and consequently the view taken by the MRT is in direct conflict with the decision of the Supreme Court made on 29 July 2013;

B] The MRT has grossly misconstrued the scope and import of the provisions contained in Section 25 of the Tenancy Act. In the present case, the defaults in payment of rent committed by the Respondents-tenants had extended beyond three years and therefore, the provisions of Section 25(2) of the Tenancy Act and not Section 25(1) of the Tenancy Act were attracted. He submitted that in terms of decision of the Hon'ble Supreme Court in case of *Hari S. Dhanavate (dead) By Lrs. Vs. A.N. Patil Tukarane (Dead) by Lrs. And anr.* ², there was no

1 2003(3) Mh.L.J. 157

2 1995 Suppl (4) SCC 616

question of afford of opportunity to clear the arrears of rent within three months as provided in the proviso to Section 25(1) of the Tenancy Act, in a situation where the default in payment of rent pertains to three years or more; and

C] That there was overwhelming material on record to establish the Respondents-tenants had indulged in acts destructive or permanently injurious to the land, in particular the Respondents-tenants had destroyed the extensive plantation of *suru* trees necessary for prevention of erosion. That apart, the Respondents-tenants had even destroyed structures on the land. In such circumstances, there was no justification for the MRT, in exercise of its revisional jurisdiction to interfere with concurrent findings of fact. It was submitted that the MRT has transgressed the limited scope of revisional jurisdiction under Section 76 of the Tenancy Act by purporting to reassess the material on record and disturb the concurrent findings of fact, even though, such findings of fact were well borne from the record and suffer from no perversity whatsoever.

9] Mr. Malpathak's contention in the context of reversal of the decision in case of *Rama D. Naikwade (supra)*, upon which the MRT has placed reliance, is well founded. In this case, both the Tahsildar as well as the SDO had held that the provisions of Section 43-A of the Tenancy Act apply, since, the suit property was leased for growing of fruits. Section 43-A of the Tenancy Act provides that the provision of Sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31, to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65 shall not apply to the leases of land granted to any bodies or other persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock. The MRT, relying upon the decision of this Court in case of *Rama D. Naikwade (supra)*, has held that sub-clause(b) of Section 43-A(1) cannot be applicable in case of lease of land to a single person, but will apply only in case of lease of land to any bodies or persons. In case, the provisions of Section 43-A of the Tenancy Act were to be inapplicable, then, the application made by the Petitioners-landlords seeking recovery of possession from the Respondent-tenants would obviously not be maintainable.

10] However, the Hon'ble Supreme Court, in case of ***Govinda B. Patil (D) by Lrs. Vs. Ganpati R. Naikwade (D) by Lrs.***³, has

3 2013 (9) SCALE 649

specifically reversed the decision of this Court in case of *Rama D. Naikwade (supra)*. The relevant observations in the context of interpretation of Section 43-A (1) of the Tenancy Act contained in paragraphs 9,10 and 11 read thus:

“9. Dr. Masodkar, then submits that the High Court committed a grave error in coming to the conclusion that Section 43A of the Act would not govern the field and cannot be made applicable to a single person. He submits that in law, the plural covers the singular also. Mr. Pandey, however, submits that the High Court is right in holding that in view of the use of the expression “any bodies or persons” in sub clause (b) of Section 43A(1) of the Act, the same cannot be made applicable to a single person. He points out that in the present case, it is an admitted position that the land in question was given on lease to a single person. In order to appreciate the rival submissions, we deem it expedient to reproduce Section 43A(1)(b) of the Act:

“43A. Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers (1) The provision of sections 4B, 8,9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65, shall not apply to-

(a) xxx xxx xxx

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) xxx xxx xxx”

10. Section 43A excludes the application of various provisions of the Act including 33C in respect of “leases” granted to “any bodies or persons” inter alia for the purpose of cultivation of sugarcane. However, in view of the plural expression “any bodies” or “persons”, the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more

than one person and not singular person. It seems that the attention of the Court was not drawn to Section 13 of the Bombay General Clauses Act, 1904 which inter alia provides that words in the singular shall include the plural and vice versa. Section 13 of the aforesaid Act reads as follows:

“Section 13 - Gender and number.

In all Bombay Acts or Maharashtra Acts, unless there is anything repugnant in the subject or context, -

(a) words importing the masculine gender shall be taken to include females; and

(b) words in the singular shall include the plural, and vice versa.”

11. It is relevant here to state that the High Court has not come to the conclusion that there is anything repugnant in the subject or context so as to come to the conclusion that the plural will not include the singular. We have examined the use of the plural word “persons” from that angle and we do not find that there is anything repugnant in the subject or context so that it may not be read as singular. It is worth mentioning here that sub-section (b) of Section 43A(1) of the Act has also used the plural expression “leases” and if we accept the reasoning of the High Court, the aforesaid provision shall cover only such cases where there is more than one lease. This, in our opinion, will defeat the very purpose of the Act.”

(emphasis supplied)

11] From the aforesaid, it is quite clear that the MRT has grossly erred in its interpretation of the provisions contained in Section 43-A(1)(b) of the Tenancy Act. The view taken by the MRT that the provisions contained in Section 43-A(1)(b) of the Tenancy Act are inapplicable to the lease of said property is therefore, unsustainable and is required to be set aside.

12] Similarly, the MRT has also not properly interpreted the scope and import of the Section 25 of the Tenancy Act in the context of default in the payment of rent committed by the Respondents-tenants. The material on record, indeed indicates that the Respondents-tenants have defaulted in the payment of rents for the period in excess of three years. In fact, it is the case of the Petitioners-landlords that the defaults extend from the year 1982 onwards. In these circumstances, the MRT was obviously not right in applying the provisions of Section 25(1) of the Tenancy Act to the facts and circumstances of the present case. Rather, the MRT was required to consider the matter in the light of provisions contained in Section 25(2) of the tenancy Act. The distinction between the two provisions is apparent. Section 25(1) enables a Mamlatdar to grant relief against termination of tenancy for non-payment of rent by facilitating payment of rent on call to the tenant to pay it directly to the landlord or in court with costs of the proceedings within 15 days from the date of the order, and on failure of which to suffer an ejectment. In contrast, Section 25(2) carves out an exception that if the tenant is in arrears on his failure to pay rent for any three years, the landlord has to give an intimation to that effect to the tenant within a period of 3 months of each default, and then ejectment must follow as a consequence and the remedial provision under

Section 25(1) cannot come to the rescue of the tenant*.

13] However, in order that the Petitioners succeed on the basis of provisions contained in Section 25(2) of the Tenancy Act, it was necessary for the Petitioners to both plead as well as prove that they have given intimation to the Respondents-tenants with regard to the defaults, within a period of three months on each default. If the pleadings are perused, there are no clear averments to the effect that necessary intimation was given to the Respondents-tenants with regard to defaults within a period of three months on each default. There is also no evidence to this effect on record. Mr. Malpathak indeed submitted that there are some civil suits instituted by the Petitioners-landlords against the Respondents-tenants, in which there is some material in this regard. However, it is impermissible to place reliance upon such material, if any, in the present proceedings. Besides, it is settled position in law that the evidence which is beyond the pleadings, cannot be taken into consideration. Therefore, even though, the MRT has erred in failing to note the distinction between the provisions contained in Section 25(1) and 25(2) of the Tenancy Act, on the basis of material on record, the Petitioners cannot be said to have established the factum of intimation to the Respondents-tenants within period of three months on each default.

* Haril S. Dhanavate (D) by Lrs. Vs. A.N. Patil Tukarane (D) by Lrs. - 1995 Supp (4) SCC 616

Accordingly, the conclusion recorded by the MRT on the aspect of denial of eviction on the ground of default in the payment of rents need not be interfered with, even though, the reasoning of the MRT in this regard cannot be approved.

14] There is however, merit in the submission of Mr. Malpathak that there was overwhelming material on record to establish that the Respondents-tenants had indeed indulged in acts destructive or permanently injurious to the land. Further, the MRT, in the exercise of its limited revisional jurisdiction, ought not to have interfered with the concurrent findings of facts recorded by the Tahsildar and the SDO upon this aspect. At the outset, it must be noted that under Section 76 of the Tenancy Act, the revisional jurisdiction can be exercised where the order of the Collector (SDO) is contrary to the law; or where the Collector (SDO) has failed to determine some material issue of law; or where there is a substantial defect in following the procedure provided by the Tenancy Act, which has resulted in miscarriage of justice. If the impugned judgment and order made by the MRT is perused, it is quite clear that the MRT has not interfered with the orders made by the Tahsildar and SDO upon any of the grounds permissible for interference under Section 76 of the Tenancy Act. The MRT has re-assessed the material on record, as if, it were exercising some appellate jurisdiction. This is clearly

impermissible and the impugned judgment and order made by the MRT is liable to be set aside on this ground as well.

15] The MRT, has no doubt, stated in its impugned judgment and order that the findings of fact recorded by the Tahsildar and the SDO are based upon inadmissible evidence. In this regard, the MRT has referred to the affidavits filed by Savitagauri Modi and other witnesses, but observed that such affidavits could not have been taken into consideration, without actual examination of the witnesses in the Court and the afford of opportunity of cross-examination to the Respondents-tenants. On the aspect of afford of opportunity of cross-examination, the MRT would certainly have been right, provided, the Respondent-tenants, had appeared in the proceedings and were thereafter denied such opportunity. The record in the present case bears out that there was valid service upon the Respondents-tenants. In fact, even the MRT, in paragraph '6' of the impugned judgment and order dated 19 October 2011, has categorically returned a finding that there was a valid service upon the Respondents-tenants and there was no reason as to why the Respondents-tenants failed to appear in the proceedings before the Tahsildar. The relevant observations in paragraph '6' read thus:

6. In this case, I am satisfied that notices of proceedings before Tahsildar were served on all the applicants and respondent No.9. Respondent Nos.8 & 10 were then at Bombay and

therefore as per Talathi's report notices were fixed on the door of the house. Original Respondent No.1 Meenakshi Kadam was seriously ill and therefore, was not served. It is argued on behalf of applicant that Meenakshi died on very next day of service of notices on other appellants and respondents. I may refer to the report of Talathi on page 121 and the postal acknowledgements at pages 155 & 157. Even though the absence of applicants in October, 2008 could be overlooked in view of death of Meenakshi, still there was no reason for applicants and respondent No.9 not to appear before learned Tahsildar for enquiry in November, December, January & February. It is worth noting that Respondents 8 & 10 did not file Appeal or Revision against the impugned order. In the circumstances, I am not satisfied that present Revision Applicants had no sufficient opportunity contesting the proceedings before learned Tahsildar and it is a matter worth of remand.

16] Once it is established that there was valid service upon the Respondents-tenants, despite which the Respondents- tenants remained absent or took no part in the proceedings before the Tahsildar, there was no reason to exclude the evidence lead by Savitaguari, who at the relevant stage was 92 years of age, as also, the evidence of the other witnesses for and on behalf of the Petitioners-landlords. The MRT has also erred in referring to the affidavits of Savitaguari as being as xerox copy of the affidavit. The xerox copy noticed is only a true copy of the original. In any case, there was documentary evidence on record, which established the acts of destructive and permanent injury to the said property. The Respondents-tenants, despite valid service, had neither appeared in the proceedings before the Tahsildar, nor filed any written statement to dispute the averments made by the Petitioners-landlords in the

context of destruction and permanent injury to the said property caused by the Respondents-tenants. Strictly speaking therefore, the averments in the plaint, having not been denied by the Respondents-tenants, the material on record was more than sufficient to establish destruction and permanent injury to the said property. The Tahsildar and the SDO had considered all such material in their proper perspective and there was no perversity in the concurrent record of such findings of fact. The MRT, in exercise of its limited revisional jurisdiction, therefore, ought not to have interfered with such findings of fact.

17] There is material on record to establish that there were over 500 suru trees planted in the said property for the purposes of preventing erosion, since, the said property appears to be a sea-side property. There is reference to such suru trees in the panchanama of 2007 drawn by the Tahsildahr. The material on record suggest that such suru trees have been felled, thereby permitting erosion of the said property. The revisional Court, has purported to re-assess the material on record and observe that merely because the suru trees were in existence earlier, but were found not to be in existence in 2007, it cannot be said that it is the Respondent-tenants, who have felled the same and further, suru trees are not even fruit bearing trees. Apart from the jurisdictional aspect that the MRT ought not to

have reassessed the material on record, it must be noted that the circumstance that the suru trees are not fruit bearing trees is totally irrelevant. The suru trees were planted to prevent erosion of the said property. The cutting of such suru trees, in the facts and circumstances of the present case, clearly amounts to commission of an act which was destructive or permanently injurious to the land. There is also material on record with regard to demolition of immovable structures by the Respondents-tenants upon said property and the reconstruction thereon of new structures without authority of law. There is material on record that no steps were taken by the Respondents-tenants for the maintenance of said property, thereby permanently injuring the said property. All this material was sufficient to make out a case under Section 14(1)(ii) of the Tenancy Act.

18] For all the aforesaid reasons, the impugned judgment and order 19 October 2011 made by the MRT is set aside and the orders dated 12 February 2009 and 3 September 2009 made by the Tahsildar and SDO are restored. Accordingly, Rule is made absolute in terms of prayer clause (a).

19] There shall however, be no order as to costs.

[M. S. SONAK, J.]

20] Mr. Sudhir Prabhu, who has appeared at the stage of pronouncement of this judgment and order, for Respondents-tenants (Respondent Nos.1 to 7) applies for restraint upon dispossession in pursuance of the impugned judgment and order for a period of twelve weeks, so as to enable the said Respondents to seek recourse against this judgment and order. This request is quite reasonable and therefore, for a period of twelve weeks from today, the Respondent Nos.1 to 7 shall not be dispossessed from the said property, so also, the Respondents-tenants are directed to maintain *status quo* in respect of the said property.

[M. S. SONAK, J.]